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EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Case Law Bulletin

Week of July 24, 2017

In Focus

First Circuit	
Sanchez-Romero v. Sessions, No. 16-2416, 2017 WL 3167623 (1st Cir. July 26, 2017) (MTR-CCC)	The First Circuit denied the PFR, concluding that the Board properly determined that petitioner failed to demonstrate changed country conditions and therefore properly denied his MTR without determining whether he made out a prima facie case for eligibility.
Pereira v. Sessions, No. 16-1033, 2017 WL 3225147 (July 31, 2017) (COR-stop-time rule)	The First Circuit denied the PFR, affording the Board's decision in Matter of Camarillo, 25 I&N Dec. 644 (BIA 2011) (concluding that an NTA that does not contain the date and time of the hearing nevertheless triggers the application of the stop-time rule), Chevron deference.
Second Circuit	
Heredia v. Sessions, Nos. 16-1465, 16-3346, 2017 WL 3178573 (2d Cir. July 27, 2017)(COR-stop-time rule)	The Second Circuit denied the petition for review, finding that the Board did not abuse its discretion in denying the petitioner's MTR for failing to demonstrate prima facie eligibility for COR. The Second Circuit agreed with Matter of Perez, 22 I&N Dec. 689 (BIA 1999) (en banc) that for the purpose of the stop-time rule, "the date of the commission of the qualifying offense controls the calculation of a person's continuous residency in the United States."
Fourth Circuit	
United States v. Diaz, No. 16-4226, 2017 WL 3159918 (4th Cir. July 26, 2017) (COV)	The Fourth Circuit concluded that 49 U.S.C. § 46504 (flight crew interference) is an indivisible offense and does not categorically constitute a crime of violence under the force clause of 18 U.S.C. § 16(a). (The government waived its right to rely on 18 U.S.C. § 16(b)).
Zavaleta-Policiano v. Sessions, No. 16-1231, 2017 WL 3172420 (4th Cir. July 26, 2017) (unpublished) (Asylum-Nexus)	The Fourth Circuit granted the PFR, concluding that the Board erred in affirming the IJ's findings because petitioner was not required to demonstrate that the threats were "exclusively" motivated by her family membership but was only required to "show that the relationship with her father was 'at least one central reason'" she was threatened. See Hernandez-Avalos, 784 F.3d 944, 950-51 (4th Cir. 2015).
Velasquez v. Sessions, No. 16-1669, 2017 WL 3221643 (4th Cir. July 31, 2017) (Asylum-Nexus, PSG)	The Fourth Circuit denied the PFR, concluding that petitioner's dispute with her alleged persecutor was not "'on account of' [petitioner's] membership in a particular social group," her alleged family group, "but was simply a personal dispute." Cf. Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015) ("[M]embership in a nuclear family qualifies as a protected ground for asylum purposes.").
Sixth Circuit	
Privett v. Dep't. of Homeland Security, No. 16-3243, 2017 WL 3160967 (6th Cir. July 26, 2017) (Visa Petition-AWA)	The Sixth Circuit reversed the district court's "finding of lack of jurisdiction as to whether [petitioner] was subject to the AWA," and remanded to determine whether petitioner had engaged in "sexual conduct involving a minor" or "conduct that by its nature is a sex offense against a minor" under the Adam Walsh Child Protection and Safety Act (42 USC § 16911(7)(H), (I)),
Seventh Circuit	

Orellana-Arias v. Sessions, No. 16-1874, 2017 WL 3138309 (7th Cir. July 25, 2017) (Asylum-PSG)	The Seventh Circuit denied the PFR, concluding in part that "wealth, standing alone, is not an immutable characteristic of a cognizable social group." Id., at *4 (internal quotation marks omitted).
United States v. Enoch, No. 16-1546, 2017 WL 3205806 (7th Cir. July 28, 2017) (ACCA-COV)	The Seventh Circuit affirmed the district court, concluding that 18 U.S.C. § 2114(a) (robbery of government property) is "a divisible statute with two distinct parts with separate elements and sentences," and that the second part constitutes a crime of violence under ACCA's elements clause (aka force clause), 18 U.S.C. 924(c)(3)(A) (same as 18 U.S.C. § 16(a)).
Eighth Circuit	
Kegeh v. Sessions, No. 16-2554, 2017 WL 3221301 (8th Cir. July 31, 2017) (Asylum-ACF)	The Eighth Circuit denied the PFR, concluding that the IJ's ACF was supported by specific, cogent reasons, and the asylum denial was supported by substantial evidence.
Ninth Circuit	
United States v. Rivera, No. 16-50115, 2017 WL 3188450 (9th Cir. July 27, 2017) (unpublished) (Illegal Reentry Conviction; Fundamentally Unfair)	The Ninth Circuit reversed the district court, dismissing petitioner's indictment for illegal reentry pursuant to 8 U.S.C. §§ 1326(a), (b)(2), concluding that "the entry of the [initial removal] order was fundamentally unfair" because the IJ was "on notice that [petitioner] was lost in 'the morass of immigration law' . . . [but] fail[ed] to more fully explain the proceedings [and] caused [petitioner] not to seek the relief for which he was plausibly eligible."